IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 1885 of 2005

M/s. Gujarat Alkalies and Chemicals Ltd. .. Petitioners
V/s.
Union of India & Ors. .. Respondents

Mr. V.S. Nankani i/b. Mr. Madhur Baya for the Petitioners
Mr. M.I. Sethana, Sr. Counsel with Mr. A.M. Sethana for the Respondent Nos. 1, 2 and 4.

CORAM : DR. S. RADHAKRISHNAN & J.H. BHATIA, JJ.
DATED : 25.07.2005.

P.C.:-

1. Heard the learned counsel for the Petitioners and the learned Senior Counsel for the Respondent Nos. 1, 2 and 4. Rule. Rule made returnable forthwith. The presence of the Respondent No. 3 is not necessary. By consent taken up for hearing.

2. In the above, it appears that the Petitioner had raised the issue of limitation and also on merits and with regard to quantification in the Appeal, which was filed before the learned Commissioner of Customs (Appeals), Mumbai. The learned Commissioner of Customs (Appeals), Mumbai by his order dated 15.11.2002 disposed of the Appeal only on the ground that the show cause notice dated 9.8.2001 was time barred and as such, the order passed by the lower authority confirming the same to be neither legal nor proper. In the last sentence of the order, the learned Commissioner of Customs (Appeals) has made it clear that the impugned order was set aside only on the

ground of limitation and not on the merits at all.

3. Aggrieved thereby, the Respondents had preferred an Appeal to The Customs, Excise and Service Tax Appellate Tribunal against the said order of the Commissioner of Customs (Appeals) only on the ground of delay. It is very clear that the only ground raised in the memo is with regard to the limitation. The Customs, Excise and Service Tax Appellate Tribunal by it's order dated 11.3.2005 allowed the Appeal and held that the demand was not time barred and accordingly, the order of Commissioner of Customs (Appeals) was set aside. Unfortunately, the Customs, Excise and Service Tax Appellate Tribunal has not remanded back the matter to be heard by the Commissioner of Customs (Appeals) on merits. The record is explicitly clear that the Commissioner of Customs (Appeals) has not heard the matter on merits.

4. Under the aforesaid facts and circumstances, we remand back the said Appeal before the Commissioner of Customs (Appeals) to be heard on merits fully. We direct the Respondent No. 4 to hear the Appeal filed by the Petitioner on merits as expeditiously as possible, preferably within a period of two months from today, and pass a reasoned order, after affording an opportunity of personal hearing to the Petitioner. Under these circumstances, and in the larger interests

of justice, as we have remanded back the Appeal, we

quash and set aside the detention notice dated 10.6.2005, which is at Exhibit "M" to the Petition. Rule is accordingly made absolute.

(DR. S. RADHAKRISHNAN, J.)

(J.H. BHATIA, J.)